

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
January 14, 2008

D051044 In re Valerie L. et al., Juveniles

The judgment is affirmed. Benke, Acting P.J.; We Concur: Nares, J., McIntyre, J.

D048633 People v. Taylor

The judgment is affirmed. Aaron, J.; We Concur: McIntyre, J., O'Rourke, J.

D049394 People v. Taylor

The judgment is affirmed. Aaron, J.; We Concur: McIntyre, J., O'Rourke, J.

Court convened at 9:00 a.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justice Terry O'Rourke

D049707 Paredes et al. v. State of California

Cause called on merits. Thomas F. Friedberg, Esq. argued for appellant. Julie E. Saake, Esq. argued for respondent. Mr. Friedberg replied. Cause to be submitted once Justice Benke has had a chance to listen to the CD of oral argument.

D050611 People v. Arnold

Cause called on merits. John L. Staley, Esq. argued for appellant. Michael Murphy, Deputy Attorney General argued for respondent. Cause to be submitted once Justice Benke has had a chance to listen to the CD of oral argument.

D048668 Souab v. Atlas Hotels Inc., et al.

Cause called on merits. David A. Niddrie, Esq. argued for appellant. Amy T. Wintersheimer-Findley, Esq. argued for respondent. Mr. Niddrie replied. Cause to be submitted once Justice Benke has had a chance to listen to the CD of oral argument.

Court recessed at 9:53 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Alex McDonald and Joan Irion'

Clerk: D. Moore

D051050 In re Maria V. et al., Juveniles

Cause called on merits. Gary C. Seiser, Deputy County Counsel argued for appellant, the County. Konrad Lee, Esq. argued for appellant, Maria V. Joanne Willis Newton, Esq. argued for respondent, Mayra V. Susan Bookout, Esq. argued for respondent, Calixto H. Ms. Newton replied. Mr. Seiser replied. Mr. Lee replied. Cause submitted.

Court recessed at 2:11 p.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Joan Irion

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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January 14, 2008 (Continued)

D049162 Perez v. Borucki

Cause called on merits. John T. Burke, Esq. argued for appellant. Theodore S. Dracar, Esq. argued for respondent. Mr. Burke replied. Cause submitted.

D051014 Syber Sales & Marketing, Inc. v. California Building & Remodeling, Inc., et al.

Cause called on merits. Mitchell Reed Sussman, Esq. argued for appellant. Judi M. Sanzo, Esq. argued for respondent, California Building & Remodeling, Inc. Richard J. Ritchie, Esq. argued for respondent, SMS.AC, Inc. Mr. Sussman replied. Cause submitted.

Court recessed at 2:56 p.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Richard Huffman and Terry O'Rourke

D049200 Killman v. Wilhelm et al.

Cause called on merits. No appearance by appellant's counsel. E. Ludlow Keeney, Esq. was present in oral argument for respondent and submitted on the briefs. Cause submitted.

D048937 Parker v. Parker

Cause called on merits. James C. Stevens, Esq. argued for appellant/cross-respondent. Kenneth H. Stone, Esq. argued for respondent/cross-appellant. Cause submitted.

Court recessed at 3:33 p.m. until Tuesday, January 15, 2008 at 9:00 a.m.

D048379 Rancho Mesa Residents Inc., et al. v. Manufactured Home Communities, Inc.

The pending appeal, D048379, Rancho Mesa Residents Inc., et al. v. Manufactured Home Communities Inc., et al. is consolidated with the pending appeal in D049906, Rancho Mesa Residents Inc., et al. v. Manufactured Home Communities Inc., et al. for disposition.

D048379 Rancho Mesa Residents Inc., et al. v. Manufactured Home Communities, Inc.

D049906 Rancho Mesa Residents Inc., et al. v. Manufactured Home Communities, Inc.

The order denying class certification is affirmed. The order denying restoration to the trial calendar and dismissing the action is reversed with directions to conduct appropriate further proceedings to reinstate the case to active status in accordance with the views expressed in this opinion. Each party shall bear its own costs. Huffman, Acting P.J.; We Concur: Haller, J., McDonald, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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January 14, 2008 (Continued)

D050449 McLeod et al. v. Vista Unified School District

The judgment is affirmed. The District is awarded costs on appeal. CERTIFIED FOR PUBLICATION. McConnell, P.J.; We Concur: McIntyre, J., O'Rourke, J.

D047861 Bill Signs Trucking LLC et al. v. Signs Family Limited Partnership et al.

The petition for rehearing is denied.

D049662 De Name v. Salum

Upon written request filed by appellant, the appeal is dismissed and the remittitur is ordered to issue immediately.

D050277 Rogers v. San Diego County Regional Airport Authority

The petition for rehearing is denied.

D051322 In re Serenity C., a Juvenile

The orders are affirmed. Nares, Acting P.J.; We Concur: McDonald, J., Irion, J.

D051058 In re Ashton P., a Juvenile

Judgment affirmed. Irion, J.; We Concur: Huffman, Acting P.J., Haller, J.

D049537 Diaz et al. v. SCI California Funeral Services, Inc.

The order granting new trial is modified to provide that the new trial shall be limited to the issue of damages; as so modified the order is affirmed. Each party is to bear its own costs on appeal. O'Rourke, J.; We Concur: McConnell, P.J., McIntyre, J.

D051776 Krystal v. The Regents

Appellant's petition for rehearing is denied.

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D050095 People v. Davalos

The judgment is affirmed. O'Rourke, J.; We Concur: Huffman, Acting P.J., McIntyre, J.

D050900 In re Karina Y. et al., Juveniles

The orders are affirmed. Aaron, J.; We Concur: McConnell, P.J., McDonald, J.

D049479 McConnaughey et al. v. Rhodes et al.

The judgment is affirmed. The McConnaugheys are entitled to costs on appeal. McConnell, P.J.; We Concur: Nares, J., O'Rourke, J.

D051514 In re G.S., a Juvenile

The judgment is affirmed. McConnell, P.J.; We Concur: Huffman, J., O'Rourke, J.

D051856 People v. Dyson

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 8.360(c)(5)(A). The appeal is dismissed.

D052244 AMCO Insurance Company v. Superior Court San Diego County/Avocado Crest Condominiums et al.

At the request of petitioner, the petition for writ of mandate is DISMISSED.

D050671 People v. Munoz

The judgment is affirmed. O'Rourke, J.; We Concur: McDonald, Acting P.J., Aaron, J.

D052099 Seanna K. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Seanna K. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is DISMISSED.

D052116 Brooke F. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Brooke F. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is DISMISSED.

D052053 Ashley P. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Ashley P. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is DISMISSED.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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Court convened at 9:00 a.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Cynthia Aaron
Clerk: D. Moore

D050150 People v. Paredes

Cause called on merits. James E. Atkins, Deputy District Attorney General argued for respondent. Patrick Morgan Ford, Esq. argued for respondent. Cause submitted.

D049851 Barnes v. Marvaso

Cause called on merits. Robert M. Steele, Esq. argued for appellant. Jill Raffee, Esq. argued for respondent. Mr. Steele replied. Cause submitted.

Court recessed at 9:37 a.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Cynthia Aaron

D049385 White v. Alex Brown Management Services Inc., et al.

Cause called on merits. Thomas M. Peterson, Esq. argued for appellant. Christopher E. Thorsen, Esq., pro hac vice, was present in oral argument with appellant, but did not argue. Frank E. Rogozienski, Esq. argued for respondent. Mr. Peterson replied. Cause submitted.

Court recessed at 10:35 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Joan Irion

D049860 Mazzone et al. v. Perrotta

Cause called on merits. James A. Mangione, Esq. argued for appellant. John Edwards, Esq. argued for respondent. Mr. Mangione replied. Cause submitted.

Court recessed at 1:57 p.m. to change panel members. New panel members: The Honorable Judith McConnell Presiding Justice, and The Honorable Associate Justices Richard Huffman and Joan Irion

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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January 15, 2008 (Continued)

D048789 People v. Haiman

Cause called on merits. Marianne Harguindeguy, Esq. argued for appellant. Sharon Rhodes, Deputy Attorney General argued for respondent. Ms. Harguindeguy replied.

D048578 Woodall v. Asset Marketing Systems Insurance Services LLC. et al.

Cause called on merits. Barry D. Mills, Esq. argued for appellant. James M. Peterson, Esq. argued for respondent. Mr. Mills replied. Cause submitted.

D049943 Dimension One Spas, Inc. v. Van Eetvelde

Cause called on merits. Nancy L. Stagg, Esq. argued for appellant. Leonid M. Zilberman, Esq. argued for respondent. Ms. Stagg replied. Cause submitted.

D049350 Brand v. The Regents of the University of California et al.

Cause called on merits. Joel C. Golden, Esq. argued for appellant. John S. Adler, Esq. argued for respondent. Mr. Golden replied. Cause submitted.

Court recessed at 3:11 p.m. until Wednesday, January 16, 2008 at 9:00 a.m.

D052031 110 Associates LLC v. Grover

Appellant's motion to vacate the dismissal and reinstate the appeal is granted. The order of dismissal is vacated and the appeal is reinstated.

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D048830 Schutte & Koerting Inc., et al. v. Regional Water Quality Control Board, San Diego Region

The opinion filed December 20, 2007, is ordered certified for publication.

D050052 In re X.M., Minor

The trial court's October 24, 2006 order is affirmed. Enrique is to bear costs on appeal. Aaron, J.; We Concur: McConnell, P.J., O'Rourke, J.

Court convened at 9:00 a.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justice Terry O'Rourke
Clerk: D. Moore

D049212 People v. Jones

Cause called on merits. Joanna Rehm, Esq. argued for appellant. Eric Swenson, Deputy Attorney General, argued for respondent. Ms. Rehm replied. Cause to be submitted once Justice Benke has had a chance to listen to the CD of oral argument.

Court recessed at 9:32 a.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Terry O'Rourke

D049673 Mancelli v. Rustie's International, Inc.

Cause called on merits. Scott McMillan, Esq. argued for appellant. Robert J. Gaglione, Esq. argued for respondent. Mr. McMillan replied. Cause submitted.

Court recessed at 9:57 a.m. to change panel members. New panel members: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justice Terry O'Rourke

D049183 San Diego Convention Center Corporation, Inc. v. Brady, III

Cause called on merits. Leon A. Brady, III, argued for appellant in pro per. Regina Petty, Esq. argued for respondent. Mr. Brady replied. Cause to be submitted once Justice Benke has had a chance to listen to the CD of oral argument.

Court recessed at 10:05 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE

January 16, 2008 (Continued)

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Alex McDonald

Clerk: D. Moore

D050280 People v. Willis

D051292 In re Willis on Habeas Corpus

Cause called on merits. Patrick Morgan Ford, Esq. argued for appellant. Scott Taylor, Deputy Attorney General argued for respondent. Mr. Ford replied. Cause submitted as to appeal only, D050280.

Court recessed at 2:04 p.m. to change panel members. New panel members: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre

D048647 Ashford v. Goeppinger-Curran Development et al.

Cause called on merits. Burk N. Ashford, argued for appellant in pro per. Lawrence R. Alessio, Esq. argued for respondent. Mr. Ashford replied. Cause submitted.

D049879 Butterwick et al. v. Fitzpatrick et al.

Cause called on merits. Bryan D. Sampson, Esq. argued for appellant. Seana K. Scholtemeyer, Esq. was present in oral argument with Mr. Sampson, but did not argue. William V. Whelan, Esq. argued for respondent, Dr. Butterwick and etc. Richard E. McCarthy, Esq. argued for respondent, Dr. Tse and etc. Duane S. Horning, Esq. argued for respondent, Dr. Fitzpatrick and etc. Mr. Sampson replied. Cause submitted.

Court recessed at 3:13 p.m. until Thursday, January 17, 2008 at 9:00 a.m.

D049196 Pronovost v. Aurora Loan Services et al.

The order is affirmed. Haller, J.; We Concur: Nares, Acting P.J., McDonald, J.

D047468 In re Little on Habeas Corpus

The petition is denied. McDonald, Acting P.J.; We Concur: Aaron, J., Irion, J.

D049862 People v. Twyne

D050986 In re Twyne on Habeas Corpus

(consolidated) On the court's own motion, rehearing is granted to address the issue of appellant's claim of ineffective assistance of counsel as set forth in Ground 2 of the writ petition, pursuant to California Rules of Court, rule 8.268(a)(1).

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D051688 In re Goddard on Habeas Corpus
The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE

January 16, 2008 (Continued)

D049198 Brack v. Omni Loan Company et al.

Following oral argument, the following questions have arisen:

1. The trial court's statement of decision contains the following statements: "The Department of Corporations can easily review any allegations against OMNI'S operation in California, possibly requiring OMNI to change its operation or obtain licensure in California. That is strictly a regulatory function and does not change the nature of this Court's analysis of the choice of law issue." (Appellant's Appendix 1409-1410). "From this Court's point of view, this case was far more about regulating the conduct of OMNI, whether or not OMNI could continue operating without being forced to obtain licenses in the state of California. This case had much less to do with Nevada law causing a violation of a fundamental policy in the state of California. The Plaintiff clearly provided proof of some legitimate complaints about OMNI'S operation. However, those complaints must be addressed through the Nevada and California regulatory agencies, and the specific dispute between the Plaintiff and the Defendant over the contract in question, must be decided using Nevada state law." (Appellant's Appendix 1416.)

In light of these statements, can this court conclude that:

a. The issue of Omni's licensure was raised in the trial court; and
b. Nonetheless, the trial court made no express finding with respect to whether Omni was required by Financial Code section 22100 to have a license?

2. The trial court's statement of decision also contains the following statement: "[T]he Court finds that California has a materially greater interest in the overall loan process than does Nevada, the consumer being in California, not Nevada, most likely the loan proceeds will be spent in California and many loans repaid while in California with collateral located in California." (Appellant's Appendix 1415.)

a. Is this statement supported by substantial evidence in the record? If it is, please provide a citation to those portions of the record which support it.

b. May this court conclude from this finding that in fact, absent the choice of law provision in the Omni loan agreements, Omni was engaged in finance lending in California within the meaning of section 22100 of the Financial Code?

3. Under sections 22750, subdivision (b), and 22752 the failure to obtain a license when required by section 22100 may prevent a lender from collecting principal, interest and fees. In cases providing private litigants with the benefit of analogous forfeiture remedies in other regulatory schemes, our courts have not imposed a requirement that the need for licensing first be determined by a regulatory agency. (See e.g. *Hydrotech Systems, Ltd. v. Oasis Waterpark* (1991) 52 Cal.3d 988, 994-996.) Is there any authority which supports the trial court's apparent conclusion (see Appellant's Appendix 1410) that the remedies provided by sections 22750, subdivision (b), and 22752 arise only after the Department of Corporations has determined, as a regulatory matter, that a person is engaged in finance lending within the meaning of section 22100?

4. In determining whether the regulatory scheme set forth in the Finance Lenders Law expresses the fundamental policy of the state, may the court consider the relative severity of the remedies provided by Financial Code sections 22750, subdivision (b), and 22752?

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January 16, 2008 (Continued)

5. Is there any authority which would support the proposition that by way of a contract a consumer can relieve a lender of the licensing requirements set forth in Financial Code section 22100?

6. Is there any authority which would permit a lender to require that a borrower forgo the remedies provided by Financial Code sections 22750, subdivision (b), and 22752 if those remedies were, in the absence of such agreement, available to the borrower?

The parties are directed to answer the foregoing questions by letter brief within 30 days of the date of this order.

The order submitting this case is vacated. The case will be resubmitted upon receipt of the parties' letter briefs.

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DIVISION ONE
January 17, 2008

D050179 In re B.D. et al., Juveniles

The judgment and orders are affirmed. O'Rourke, J.; We Concur: Nares, Acting P.J., Irion, J.

D050193 People v. Peterson

The judgment is affirmed. Huffman, J.; We Concur: McConnell, J., O'Rourke, J.

D051224 In re Marcel M. et al., Juveniles

This case, including Respondent's motion to dismiss the appeal on grounds of nonappealability and mootness, has been review by Associate Justices Aaron, Nares and McIntyre. The court takes judicial notice of the minute order attached to the motion. The motion is granted. The appeal is dismissed.

D050147 People v. Ford

The sentence on the 10-year gang enhancement is vacated and a 15-year minimum parole eligibility term under section 186.22, subdivision (b)(5) is imposed instead. Direct victim restitution is modified to be joint and several with codefendants Christina Alexander, Lawrence Bates, Randy Howard, Michael Hune, and Terri Adkins. The court is directed to prepare a corrected abstract of judgment reflecting the striking of the gang enhancement, imposition of the 15-year minimum parole eligibility term, and joint and several liability for direct victim restitution, and to forward the corrected abstract of judgment to the Department of Corrections and Rehabilitation. As modified, the judgment is affirmed. Aaron, J.; We Concur: Huffman, Acting P.J., Haller, J.

D052015 Sutton et al. v. The Superior Court of San Diego County/The City of Escondido

The petition is denied.

D049884 Combs v. Skyriver Communications Inc., et al.

The judgment is affirmed. Skyriver and Tayebi shall recover their costs on appeal. Nares, J.; We Concur: Huffman, Acting P.J., O'Rourke, J.

D049332 Panther v. Mazzarella

Summary judgment for Mazzarella is affirmed. The request for judicial notice is denied. Costs are awarded to respondent. Huffman, Acting P.J.; We Concur: McDonald, J., McIntyre, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

January 17, 2008 (Continued)

D051703 In re McNeal on Habeas Corpus

The petition for writ of habeas corpus, as amended December 27, 2007, has been read and considered by Justices Nares, McIntyre and Aaron. We take judicial notice of petitioner's direct appeal No. D048681, and the following prior habeas petitions: Nos. D051582, D051526, D051466, D051328, D050370, D049826, D049770, D049297, D049219, and D048693.

Petitioner was charged with multiple counts of burglary, grand theft, and receipt of stolen property from events in July through September 2004. Petitioner was found incompetent to stand trial in 2004 and 2005, and proceedings were suspended. In 2006, petitioner was found competent to stand trial, and proceedings resumed. On April 19, 2006, petitioner's mental health once again became an issue.

Petitioner indicated he believed his attorney, the district attorney, and the court were part of a conspiracy to silence and kill him. Petitioner also indicated he attempted to kill himself by swallowing a toothbrush, pencil, and a spoon. Petitioner was evaluated by a psychiatrist, who found him "severely mentally ill and out of touch with reality." On May 15, 2006, the court found petitioner not mentally competent to stand trial, committed him to Patton State Hospital for three years, and ordered involuntary administration of antipsychotic medication to render him competent to stand trial.

Petitioner appealed his commitment in No. D048681. This court affirmed the judgment on September 4, 2007. Since petitioner's May 15, 2006 commitment, petitioner has filed at least 10 prior habeas petitions in this court, all of which were denied.

In petitioner's most recent round of filings, he filed habeas petitions in the superior court dated July 23, 2007, and August 6, 2007. The superior court denied both petitions because petitioner provided no evidence, such as medical records, to support his petition. (*People v. Duvall* (1995) 9 Cal.4th 464, 474-475.)

In the instant petition, petitioner contends that he received credit for time spent in jail between commitments that exceeds his maximum commitment term, but is not being released because his maximum term was reset each time he was recommitted. He therefore believes he has been incarcerated longer than his maximum commitment term, and should be released.

Petitioner faces three significant procedural obstacles that are fatal to his petition. First, the trial court has not passed on this issue. Thus, even though this court has original jurisdiction over habeas proceedings, we deny the petition for failing to properly present the factual basis for the claims to the trial court in the first instance. (See *In re Steele* (2004) 32 Cal.4th 682, 692; *In re Hillery* (1962) 202 Cal.App.2d 293, 294.) Although petitioner recently petitioned the superior court, the court did not reach the merits of the petition, and instead denied those petitions for lack of evidentiary support.

Next, like the petition in the superior court, the instant petition is wholly devoid of any documentary evidence supporting petitioner's claim. (See *People v. Duvall, supra*, 9 Cal.4th 464, 474-475.) Petitioner has therefore failed to set forth a prima facie case for relief. (*Ibid.*)

Finally, the issue petitioner raises in the instant petition could have been raised on direct appeal, or in one of the 10 previous petitions he filed with this court since his recommitment. The petition is therefore barred as successive, and petitioner has not established an exception to the procedural bar. (*In re Robbins* (1998) 18 Cal.4th 770, 788, fn. 9; *In re Clark* (1993) 5 Cal.4th 750, 765, 767-768.)

The petition is denied.

Court convened at 9:00 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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January 17, 2008 (Continued)

Present: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Terry O'Rourke

Clerk: D. Moore

D051355 People v. Superior Court/Small

Matter called on merits. Stephen E. Carr, Deputy District Attorney argued for petitioner. Laura Arnold, Deputy Public Defender argued for real party in interest. Matter submitted.

Court recessed at 9:23 a.m. to change panel members. New panel members: The Honorable Alex McDonald, Acting Presiding Justice, and The Honorable Associate Justices James McIntyre and Terry O'Rourke

D051271 Berardi v. Superior Court/People

Matter called on merits. Jose Carlos Rojo, Esq. argued for petitioner. Richard S. Armstrong, Deputy District Attorney argued for real party in interest. Mr. Rojo replied. Matter submitted.

Court recessed at 9:38 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Alex McDonald, Acting Presiding Justice, and The Honorable Associate Justice Cynthia Aaron

Clerk: D. Moore

D048516 Licerio et al. v. Costco Wholesale Corporation

Cause called on merits. Allan Arthur Sheno, Esq. argued for appellant/cross-respondent. Lee H. Roistacher, Esq. argued for respondent/cross-appellant. Mr. Sheno replied. Cause to be submitted once Justice Benke has had a chance to review the CD of oral argument.

Court recessed at 2:35 p.m. until Friday, January 18, 2008 at 9:00 a.m.

D052108 In re McNeal on Habeas Corpus

The petition is denied.

D051692 In re Bozeman on Habeas Corpus

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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D050390 People v. Hernandez et al.

The judgment of the trial court is affirmed as to both Hernandez and Nataran. Aaron, J.;
We Concur: McConnell, P.J., O'Rourke, J.

D050394 In re Hernandez on Habeas Corpus

The petition is denied.

D051148 In re Mariah N., a Juvenile

The judgment is affirmed. Nares, Acting P.J.; We Concur: Haller, J., McDonald, J.

D050680 People v. Rams

The superior court is directed to correct the abstract of judgment to show the sentence as 25 years to life for the section 273ab conviction and to forward a corrected copy of the abstract of judgment to the Department of Corrections and Rehabilitation. As modified, the judgment is affirmed. McConnell, P.J.; We Concur: Nares, J., O'Rourke, J.

D051040 People v. Ackles

The judgment is affirmed. McConnell, P.J.; We Concur: Huffman, J., Irion, J.

D050029 In re Abraham on Habeas Corpus

The BPH is ordered to vacate the denial of parole and to conduct a new parole suitability hearing for Abraham, within 30 days of the finality of this opinion, and to issue a new decision within 45 days of the finality of this opinion. The BPH shall evaluate whether, consistent with this opinion, the manner in which Abraham personally acted during the commitment offense renders him unsuitable for parole. The BPH may also consider any evidence on Abraham's suitability for parole new or different from the evidence presented at the 2006 hearing. McDonald, Acting P.J.; I Concur: McIntyre, J., O'Rourke, J., Dissenting(Opinion)

Court convened at 9:00 a.m.

Present: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and Cynthia Aaron
Clerk: D. Moore

D049694 Lanier v. Mills, II et al.

Cause called on merits. David W. Lanier, argued as appellant in pro per, telephonically. Howard A. Kipnis, Esq. argued for respondent, Wells Fargo Bank. Mr. Lanier replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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January 18, 2008 (Continued)

D049942 Leucadia Cares et al. v. City of Encinitas

Cause called on merits. Everett L. DeLano, III, Esq. argued for appellant. Jeffrey A. Chine, Esq. argued for real party in interest and respondent, Barratt American, Inc. Glenn P. Sabine, Esq. was present in oral argument for respondent, City of Encinitas, but did not argue. Mr. DeLano replied. Cause submitted.

Court recessed at 9:54 a.m. to change panel members. New panel members: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Cynthia Aaron and Joan Irion

D049821 People v. Smith

Cause called on merits. Christian C. Buckley, Esq. argued for appellant. Marissa A. Bejarano, Deputy Attorney General argued for respondent. Mr. Buckley replied. Cause submitted.

Court adjourned at 10:20 a.m.

D049350 Brand v. Regents of the University of California et al.

Except for the trial court's ruling sustaining the demurrer to the third cause of action against Melman and the ruling sustaining the demurrer to the second cause of action, which Brand does not challenge on appeal, we reverse the judgment and remand for proceedings consistent with this opinion. Each party to bear its own costs on appeal. Irion, J.; We Concur: McConnell, P.J., Huffman, J.

D049101 LM Insurance Corporation v. Bonar

Upon written stipulation filed by the parties to the appeal, the appeal and cross-appeal are dismissed and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.244(c)(2).) The parties are to bear their own costs on appeal.

D048578 Woodall v. Asset Marketing Systems Insurance Services, LLC et al.

Affirmed. Irion, J.; We Concur: McConnell, P.J., Huffman, J.

D051763 In re Quackenbush on Habeas Corpus

The petition for a writ of habeas corpus has been read and considered by Justices Nares, McIntyre and Aaron.

Robert Lee Quackenbush seeks review of the superior court's order denying his petition for a writ of habeas corpus. In that petition, Quackenbush sought to vacate the requirement that he register as a sex offender. We do not review an order by the superior court denying a petition for a writ of habeas corpus. (*In re Clark* (1993) 5 Cal.4th 750, 767, fn. 7.) Quackenbush has not provided an adequate record to review his claims. (*People v. Duvall* (1995) 9 Cal.4th 464, 474.) The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
January 18, 2008 (Continued)

D051050 In re Maria V. et al., Juveniles

The orders are reversed. The matter is remanded to the juvenile court with directions to entertain further proceedings consistent with this opinion. Irion, J.; We Concur: McConnell, P.J., McDonald, J.